Office - Supreme Court, U.S.
FILED
FEB 11 1985
ALEXANDER L. STEVAS,
CLERK

84-1290

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM,
1984

NO. D-464
****

RICHARD BYRNE,
PETITIONER

vs.

THE MASS TRANSIT ADMINISTRATION
AND
AMALGAMATED TRANSIT WORKERS UNION,
DIVISION 1300, AFL-CIO

****

On Writ of Certiorari to the
COURT OF APPEALS OF MARYLAND

****

PETITION FOR A WRIT OF CERTIORARI

HARRY GOLDMAN, JR.
ROBERT G. SKEEN
GOLDMAN & SKEEN, P.A.
Suite 1123 Munsey Bldg.
Baltimore, MD 21202
(301) 837-4222

Attorneys for
Petitioner

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER THE FEDERALLY PROTECTED RIGHT OF UNION MEMBERS TO BE FAIRLY REPRESENTED BY THEIR UNION, WHICH AROSE OUT OF CASES INTERPRETING THE NATIONAL LABOR RELATIONS ACT, WHICH WAS PASSED PURSUANT TO THE SUPREMACY CLAUSE OF THE UNITED STATES CONSTITUTION, CAN BE TAKEN AWAY BY STATE TAKE-OVER OF THE PRIVATELY OWNED TRANSIT COMPANY?

II. WHETHER THE URBAN MASS TRANSIT ACT OF 1964 INSURED THAT THE COLLECTIVE BARGAINING RIGHTS OF THE WORKERS OF PRIVATELY OWNED TRANSIT COMPANIES HAD TO BE PRESERVED NOTWITHSTANDING THE TAKE-OVER OF THE TRANSIT SYSTEM BY THE STATE?

III. WHETHER A STATE WHICH HAS RECOGNIZED THE RIGHT OF FAIR REPRESENTATION CAN RESTRICT THE USE OF THIS FEDERALLY PROTECTIVE RIGHT BY PERMITTING AN AGGRIEVED WORKER TO SUE HIS UNION ONLY AND NOT HIS EMPLOYER

STATEMENT OF PARTIES TO THESE PROCEEDINGS

The Petitioner, Richard Byrne, was the plaintiff in the Circuit Court for Baltimore City of the State of Maryland. Petitioner Byrne was the Appellant before the Court of Special Appeals of Maryland. The Mass Transit Administration and Amalgamated Transit Workers Union, Division 1300, AFL-CIO, were the defendants in the Circuit Court for Baltimore City, of the State of Maryland. Both the Mass Transit Administration and the Amalgamated Transit Workers Union, Division 1300, AFL-CIO, were the Appellees before The Court of Special Appeals of Maryland.

TABLE OF CONTENTS

	Pages
QUESTIONS PRESENTED FOR REVIEW	1
STATEMENT OF THE PARTIES TO THE PROCEEDINGS	2
TABLE OF CONTENTS AND TABLE OF AUTHORITIES	3 thru 6
REFERENCE TO LOWER COURT OPINIONS	7
GROUNDS FOR JURISDICTION OF THIS COURT	8
STATEMENT OF THE CASE	9
ARGUMENT	13
CONCLUSION	23
APPENDIX	A-1 A-2

TABLE OF AUTHORITIES

	PAGES
UNITED STATES CONSTITUTION, ARTICLE 6, CLAUSE 2	16, 17, 20, 21
THE NATIONAL LABOR RELATIONS ACT (THE WAGNER ACT), SECTION 2 (7)	13
LABOR MANAGEMENT RELATIONS ACT (LMRA) 29 U.S.C., SECTION 185 (A)	11, 25
LABOR MANAGEMENT RELATIONS ACT (LMRA) 29 U. S. C., SECTION 301	9, 27
URBAN MASS TRANSPORTATION ACT OF 1964, SECTION 13 (C), AS AMENDED 49 U.S.C.A., SECTION 1609 (C)	19, 20, 21
MARYLAND (TRANSPORTATION) CODE, ANN. SECTION 7-605 (1977)	19

TABLE OF CASES

	PAGES
HINES VS. ANCHOR MOTOR FREIGHT, INC., 424 U.S. 554, 96 S. CT. 1048 (1976)	21
HUMPHREY VS. MOORE, 375 U.S. 335, 84 S.CT. 363 (1964). .	14, 15
JACKSON TRANSIT AUTHORITY VS. LOCAL DIVISION 1285, AMALGAMATED TRANSIT UNION, AFL-CIO, 457 U. S. 15, 102 S. CT. 2202, (1982).	21A
NATIONAL LABOR RELATIONS BOARD VS. JONES AND LAUGHLIN STEEL CORP., 301 U. S. 1, 57 S. CT. 615 (1937).	13
STATE OF CALIFORNIA VS. TAYLOR, 353 U. S. 553, 77 S. CT. 1037, (1957).	23, 24
UNITED TRANSPORTATION UNION VS. LONG ISLAND RAILROAD COMPANY, 455 U. S. 678, 102 S. CT. 1349 (1982). . . .	22, 23, 24
VACA VS. SIPES, 386 U. S. 171, 87 S. CT. 903 (1967).	14, 15, 17, 24, 2
WICKARD VS. FILBURN, 317 U. S. 111, 63 S. CT. 82 (1942).	14
BYRNE VS. MASS TRANSIT ADMINISTRATION, ET AL., MD. APP. 473A.2D 956, (1984).	15, 24, 25
MEOLA VS. BETHLEHEM STEEL CORP., ET AL. 246 MD. 226, 228 A2D 254 (1967).	24

TABLE OF LAW REVIEWS

	PAGES
COX, LABOR LAW PREEMPTION REVISITED 85 HARV. L. REV. 1341 (1972).	18

LOWER COURT OPINIONS

The Ruling of the Circuit Court of Baltimore City of the State of Maryland is unpublished. The Opinion of The Court of Special Appeals of Maryland appears at 473 A2d. 956 (Md. App. 1984) and the order of The Court of Appeals of Maryland is found in the Appendix.

JURISDICTION OF THIS COURT

The jurisdiction of This Court is sought pursuant to 28 U.S.C. 1257(3).

STATEMENT OF THE CASE

This case is an action for breach of Union-Employer Contract and for unfair representation filed on August 17, 1983, under Section 301 of the L.M.R.A. Plaintiff Byrne alleged that defendant Mass Transit Administration breached its collective bargaining agreement resulting in discharge of the plaintiff from his job. The complaint alleged that defendant Amalgamated Transit Workers Union, Division 1300, AFL-CIO, breached its duty of fair representation by failing to properly process the plaintiff's grievance at each step of the Grievance Proceeding up to and including the Aribtration Proceeding on July 15th and 21st, 1982. On May 31, 1983, a judgment was entered in The Circuit Court for Baltimore City, sustaining a Demurrer by the Amalgamated Transit Workers Union, Division 1300, AFL-CIO, and for the

granting of Mass Transit Administration's Motion Raising Preliminary Objection and For Summary Judgment. The Demurrer was sustained without leave to amend and the Motion for Summary Judgment was granted. The judgment of The Circuit Court for Baltimore City, in effect, denied plaintiff his right to bring a fair representation suit against his Union for failure to provide him with that degree of fair representation that was required to preserve his collective bargaining rights in the arbitral proceeding and, because of that failure on the part of his Union, to be discharged from his employment. Furthermore, the judgment of The Circuit Court of Baltimore City foreclosed plaintiff's action against his former employer for wrongful discharge and breach of the collective bargaining contract.

Plaintiff appealed this judgment of the Circuit Court of Baltimore City to the Court of Special Appeals of Maryland on June 16, 1983. On April 12, 1984, the Court of Special Appeals of Maryland rendered an Opinion that stated that the L.M.R.A., 29 U.S.C. 185(a) did not permit employees to maintain an action against their employer where the union allegedly failed to represent the employee in good faith. Therefore, the Appeals Court granted the employer Mass Transit Administration's Motion for Summary Judgment. However, they did allow appellant Byrne to pursue his fair representation action in the State Court. Furthermore, they stated that the duty of fair representation did not arise under the L.M.R.A. but rather as a private cause of action under State Law for breach of contract.

Appellant Byrne then filed a Petition for Writ of Certiorari in the Court of

Maryland on May 29, 1984. The petition was denied by the Court of Appeals on September 14, 1984.

It is the opinion of the Court of Special Appeals of Maryland and the Order of the Court of Appeals of Maryland which Your Petitioner now seeks to bring before This Honorable Court for its review. The time for filing the Petition for Writ of Certiorari was extended until February 11, 1985 (Appendix).

ARGUMENT

Congress may regulate and preempt all aspects of labor relations as long as they in someway affect Interstate Commerce. See Section 2(7) of the Wagner Labor Act which defines "affecting commerce" to mean "in commerce, or burdening, or obstructing commerce or the free flow of commerce". National Labor Relations Board vs. Jones and Laughlin Steel Corp., 301 U.S. 1 57 S.Ct. 615 (1937). Interstate Commerce may even extend to some activities that appear to be purely intrastate in character.

> "Although activities may be intrastate in character when separately considered, if they have such a close and substantial relation to interstate commerce that their control is essential or appropriate to protect the commerce from burdens or obstructions, Congress cannot be denied the power to exercise that control." N.L.R.B. v. Jones and Laughlin Steel Corp., 57 S.Ct. 624.

In fact, under the affectation doctrine set forth in the case of Wickard v. Filburn, 63 S.Ct. 82 (1942), it is difficult to imagine any situation where Congress could not regulate if it chose so to do.

Pursuant to this power to regulate labor relations, Congress enacted the National Labor Relations Act. Various Supreme Court cases interpreting the National Labor Relations Act of 1947, created the doctrine of the duty of fair representation. These cases held that the duty of fair representation is a part of the Collective Bargaining rights, because it is the mechanism that insures that the unions impartially enforce those rights on behalf of its members. This was the reason underlying the two seminal Supreme Court cases which applied the duty of fair representation. Vaca v. Sipes, 386 U.S. 171, 87 S.Ct. 903 (1967) and Humphrey v. Moore, 375 U.S. 335, 84 S.Ct 363 (1964).

"Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty and to avoid arbitrary conduct. Humphrey v. Moore, 375 U.S. at 342 845 Ct. at 367", Vaca v. Sipes, 87 S.Ct. 903, 910.

"It is now well established that as the exclusive bargaining representative of the employees in Owens' bargaining unit, the Union had a statutory duty fairly to represent all those employees, both in collective bargaining with Swift, see Ford Motor Co v. Huffman, 345 U.S. 330, 73 S. Ct. 681, 97 L.Ed. 1048; Syres v. Oil Worker International Union, 350 U.S. 892, 76 S.Ct. 152, 100 L.Ed. 785 and in its enforcement of the resulting Collective Bargaining Agreement, see Humphrey v. Moore, 375 U.S. 335, 84 S.Ct. 363, 11 L.Ed. 2d 370".

Vaca v. Sipes, 87 S.Ct. 903, 909-10 (1967)

However, it was the holding of the Court of Special Appeals of Maryland in the case of Byrne v. Mass Transit Administration, et al., Md. App., 473 A.2d 956 (1984) that the duty of fair representation did not arise under the L.M.R.A., but rather as a private cause of action under State Law for breach of contract. By so doing, the Court of Special Appeals of Maryland was attempting to evade the constitutional question that is created by its impairment of petitioner's right of fair representation that petitioner fully enjoyed when his employer was a privately owned transit company.

By holding that the duty of fair representation arises under State Law for breach of contract, the Court of Special Appeals ignored the requirements of the U.S. Constitution and in particular Article 6, Clause 2, which holds that the laws,

constitutions and judges of every State are bound by the "Supreme Law of the Land". The duty of fair representation developed as a mechanism to enforce the collective bargaining rights of union members. "(T)he duty of fair representation has stood as a bulwark to prevent arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law", Vaca v. Sipes, 87 S.Ct. 903, 912 (1967). The federal labor law was passed pursuant to the Supremacy Clause of Article VI of the U.S. Constitution and since it arises under the U.S. Constitution these federal rights cannot be eroded by State action.

Moreover, the Court of Special Appeals of Maryland in denying that the duty of fair representation is a federally created right, established the basis for weakening petitioner's right of fair representation

when it said that petitioner only could pursue his cause of action against his union and not his employer.

The result of this limitation of the right of fair representation is an impermissible tampering by the State with union activities that were protected by federal legislation and the cases interpreting this legislation.

> "Since the right to engage in concerted activities is one which Congress believed employees should be free to exercise as a proper weapon in unionization and collective bargaining without hinderance by employers or the State, the rule is consistent with the suggestion that State laws may not be invoked to upset the balance of interests struck by Congress against employer, union, employees, and the general public."

Cox, Labor Law Preemption Revisited, 85 Harv. L. Rev. 1341.

Congress enacted the Urban Mass Transportation Act to direct federal funds to urban areas to improve their Urban Mass Transporta-

tion systems.

Section 13(c) of the Mass Transportation Act requires a local body applying for federal transit money in order to take over a formerly private company to "preserve rights, privileges, and benefits * * * under existing collective bargaining agreement * * * " (§13 (c)(1)); "continu(e) under existing bargaining rights" (§13(c)(2)); "protec(t) employees against a worsening of their (employment) position" (§ 13(c)(3)). The Maryland Act, as it must, repeats these rights. See Annotated Code of Maryland, Transportation Article 7-605, which reads, in part:

> "(a) Protection Under Urban Mass Transportation Act of 1964 - The rights, benefits and other employee protective conditions and remedies of Section 13(c) of the Federal Urban Mass Transportation Act of 1964 . . . apply to the operation by the administration."

Congress, by passage of Section 13(c) of the Urban Mass Transportation Act of 1964, preserved for the transit workers their collective bargaining rights which they had when they were employees working for a private corporation and amongst these collective bargaining rights was the right of fair representation.

Congress was acting totally within its power constitutionally assigned to it to impose the conditions in Section 13(c). Congress derived this power from the Supremacy Clause of the United States Constitution, Article VI, Clause 2, which states:

> "This Constitution and the Laws of the United States, which shall be made in pursuance thereof; and all treaties made or which shall be made under the authority of the United States, shall be the supreme law of the land; and the Judges in every state shall be bound thereby; anything in the

Constitution or laws of
any state to the contrary
notwithstanding".

The central theme surrounding the addition of Section 13(c) was that before a public take-over of private transportation company could occur, the state or local entity would be bound to the status quo of federal relations, or, in other words, the full panoply of collective bargaining rights that existed prior to the take-over and, of course, would include fair representation In fact, Congress had no alternative, but to maintain the status quo on labor relations. To do otherwise, would be to allow the State to diminish those rights accorded to the workers through federal laws, which were based upon the Supremacy Clause of the United States Constitution, Article VI, Clause 2

This Court clearly recognized the purpose of this amendement to the Urban Mass Trans-

poration Act of 1964 in its decision rendered in the Jackson Transit Authority v. Local Division 1285, Amalgamated Transit Union, AFL-CIO, CLC, 102 S.Ct. 2202, 2204 (1982).

> "The statute lists several protective steps that must be taken before a local government may receive federal aid; among these are the preservation of benefits under the existing collective bargaining agreements and the continuation of collective bargaining rights."
>
> "To prevent federal funds from being used to destroy the collective bargaining rights of organized workers. Congress included Section 13(c) in the Act". See H.R. Rep. Mo. 204, 88th Cong. 1st Ses., 15-16 (1963)

The Jackson case clearly holds that a local government's acceptance of federal funds under the Urban Mass Transportation Act precludes it from tampering in anyway with collective bargaining rights.

A similar situation was faced by This Court in the case of United Transporation Union v. Long Island R. Co., 102 S.Ct. 1349 (1982) where a railroad in New York State, formerly privately owned, was taken over by the State. After a strike ensued, the State attempted to enjoin the strike under the Taylor Law of New York which prohibits strikes by public employees. The Supreme Court held that "to allow individual states, by acquiring railroads, to circumvent the federal system of railroad collective bargaining or any other elements of federal regulation of railroads, would destroy the long-standing and comprehensive uniform scheme of federal regulation of railroads and their labor relations thought essential by Congress and would endance the efficient operation of the interstate rail system.

Moreover, a state acquiring a railroad does so knowing that the railroad is subject to such scheme of federal regulation". United Transportation Union v. Long Island R. Co., 102 S.Ct. 1349, 1351 (1982).

Also, in the case of State v. Taylor, 77 S.Ct. 1037 (1957), This Court held that those collective bargaining rights which were passed according to the Supremacy Clause could not be violated by state action.

> "In Railway Employees Department v. Hanson, 351 U.S. 225, 232, 76 S.Ct. 714, 718, 100 L.Ed. 1112, involving Section 2, Eleventh of the Railway Labor Act, which permits the negotiation of union-shop agreements notwithstanding any law of any State, we stated that 'A union agreement made pursuant to the Railway Labor Act has, therefore, the imprimatur of the federal law upon it and by force of the Supremacy Clause of Article VI of the Constitution, could not be made illegal nor vitiated by any provisions of a State', State of California v. Taylor, 77 S.Ct.

1037, 1042."

Both the United Transportation Union v. Long Island R. Co. and the State of California v. Taylor cases show This Court has consistently held that it will not tolerate erosion by the State of rights created by federal legislation passed pursuant to the Supremacy Clause of the U.S. Constitution.

Maryland has recognized the duty of fair representation for more than two (2) decades. Meola v. Bethlehem Steel Corp., et al., 246 Md. 226, 228 A.2d 254 (1967). The Court of Special Appeals of Maryland in its decision of Byrne v. The Mass Transit Administration, et al, recognized that This Court in Vaca v. Sipes, 87 S.Ct. 903 (1967), "held that State courts have jurisdiction entertaining a union member's action against the officers and representatives of the union based on the member's claim that the union

had, without good cause or reason, refused to take to arbitration the member's grievance against his employer". Byrne v. Mass Transit Administration, 473 A.2d 956, 959 (1984).

However, the Court of Special Appeals in its decision in Byrne v. Mass Transit Administration, et al., said that the Labor Management Relations Act of 1947 precluded "actions by employees against employers when there is a binding collective bargaining agreement in which the Union is to represent its members in labor disputes. Section 185 of LMRA does not, however, preclude suits by a union member against the union because of an alleged failure of the union's duty of fair representation, nor does it expressly permit such claims". Byrne v. Mass Transit Administration, 473 A.2d 956, 959 (1984).

By so holding, the Court of Special

Appeals again boldly ignored the rights created by the federal law which has consistently allowed employees to sue their employers as well as their union in fair representation actions. This Court has maintained that in fair representation cases it is appropriate to bring the action against both the employer and the Union and this position has been taken so that the employee may obtain an adequate remedy at law.

> "For these reasons, we think the wrongfully discharged employee may bring an action against his employer in the face of a defense based upon the failure to exhaust contractual remedies, provided the employee can prove that the union as a bargaining agent breached its duty of fair representation in its handling of the employee's grievance."

Vaca v. Sipes, 87 S.Ct. 903, 914 (1967).

> "As is the case where there has been a failure to exhaust, however, we cannot believe that Congress intended to foreclose the employee from his § 301

> remedy otherwise available against the employer if the contractual processes have been seriously flawed by the union's breach of its duty to represent employees honestly and in good faith and without invidious discrimination or arbitrary conduct."

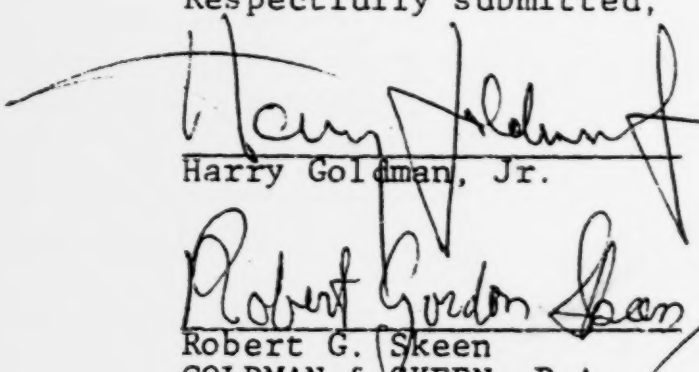
Hines v. Anchor Motor Freight, Inc., 96 S.Ct. 1048, 1059 (1976).

By restricting Petitioner's right to pursue his action against his Union only, the Court of Special Appeals of Maryland and the Court of Appeals of Maryland have impermissibly tampered with petitioner's right of the duty of fair representation that was accorded to him by the National Labors Relations Act and the Urban Mass Transportation Act of 1964 and This Court's cases interpreting these legislative enactments.

CONCLUSION

For all of the above reasons, the Petition for the Writ of Certiorari should be granted.

Respectfully submitted,



Harry Goldman, Jr.

Robert G. Skeen
GOLDMAN & SKEEN, P.A.
Suite 1123 Munsey Building
7 N. Calvert Street
Baltimore, Maryland 21202
(301) 837-4222
Attorneys for Petitioner,
Richard Byrne

SUPREME COURT OF THE UNITED STATES

No. D-464, October Term, 1984

RICHARD BYRNE,

Petitioner,

vs.

MASS TRANSIT ADMINISTRATION AND THE AMALGAMATED TRANSIT WORKERS' UNION, DIVISION 1300, AFL-CIO

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of Counsel for Petitioner, it is ORDERED, that the time for filing the Petition for Writ of Certiorari in the above-entitled cause be, and the same hereby is extended to and including February 11, 1985.

/s/ Warren E. Burger
Chief Justice of the
United States

Dated this 19th day
of December, 1984.

RICHARD BYRNE

v.

THE MASS TRANSIT ADMINISTRATION AND AMALGAMATED TRANSIT WORKERS UNION, DIVISION 1300, AFL-CIO

IN THE
COURT OF APPEALS
OF MARYLAND

Petition Docket
No. 234
September Term, 1984

(No. 916, September
Term, 1983
Court of Special
Appeals)

O R D E R

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the petition filed on behalf of Amalgamated Transit Workers Union, etc., and answers to both petitions filed thereto in the above-entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert C. Murphy
Chief Judge

Date: September 14, 1984